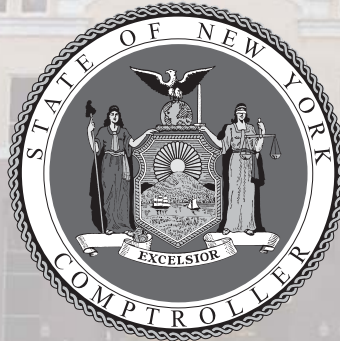




Ethics Oversight in New York State Municipalities

2009-MR-4



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2010

Dear Local 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 local government 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 titled Ethics Oversight in New York State Municipalities. 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 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*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Taxpayers have the right to expect that their local government is operated in a transparent and ethical manner, and that government officers and employees are acting in the best interests of taxpayers, and are not conflicted by personal interests. To help ensure that taxpayers' interests remain at the forefront in government operations, General Municipal Law (GML) contains provisions prohibiting municipal contracts in circumstances in which local officials' public responsibilities conflict with their personal business interests. GML requirements are the minimum standards; local governments can also establish their own standards to provide more comprehensive ethical guidance for their officers and employees. Every local official and employee is responsible for becoming knowledgeable about, and complying with, these provisions.

Article 18 of GML requires local governments to adopt codes of ethics setting forth the standards of conduct reasonably expected of officers and employees, and to distribute these standards to all employees. The local governing board should review its code of ethics and revise such code, as necessary. Each local government should also have procedures in place to ensure that employees are aware of and comply with the local government's code of ethics.

Our audit included examining ethics oversight at 31 municipalities throughout New York State. We supplemented our audit results by obtaining survey responses from 149 Chief Executive Officers (CEOs) and 217 high level local government officials and employees of counties, cities, towns, villages and school districts.

Scope and Objective

The objective of our audit was to examine local governments' ethics oversight procedures for the period January 1, 2009 to October 5, 2009. Our audit addressed the following related questions:

- Did the local governments adopt and distribute codes of ethics in compliance with GML?
- Did the governing boards develop adequate procedures to monitor compliance with the codes of ethics and with related statutory requirements?

Audit Results

We found that gaps exist in local officials' awareness of and compliance with the provisions of their municipalities' codes of ethics.

For example, 20 of the 31 municipalities we visited require certain officials and employees to file annual financial disclosure forms to identify potential conflicts of interest. However, we found that these local governments enforced this requirement very inconsistently, and seldom reviewed the information reported on the forms. Of the 20 municipalities, we found that 12 did not collect all the disclosure forms, nine did not ensure that the forms were complete, and 14 did not review the forms to identify conflicts of interest. Without enforcement of disclosure requirements, and careful review of the information on disclosure forms, taxpayers will have little assurance that local governments are serious about identifying conflicts of interest that could compromise officials' impartiality in decision-making.

We found that all 31 local governments we visited had adopted codes of ethics, as required. However, 16 percent of these codes did not address the minimum number of ethics elements required by GML. Moreover, 52 percent of the municipalities had not distributed their codes to all their officers and employees, as required by GML. Our survey responses from local government CEOs, officials and employees showed that the lack of adequate codes of ethics and inconsistent distribution of the codes is widespread. For example, 18 percent of high-level officials and employees reported that their local governments had not adopted codes as required by GML, or that they did not know whether a code had been adopted. Further, 16 percent of CEO respondents said they had not distributed (or did not know whether they had distributed) their codes of ethics to make all officers and employees aware of ethical requirements.

Unless each local government adopts a code of ethics – and ideally a code that covers more than what is minimally required by GML – and vigorously enforces the code's provisions, taxpayers can have little assurance that local officials are serious about identifying conflicts of interest and protecting public assets from misuse. It is also essential that local governments train their officers and employees about ethics so they know how to recognize and address potential ethical problems. We found that more than 80 percent of the local governments provided no training to their officers and employees on the provisions of the local government's code of ethics. Both the local officials we visited and those who responded to our survey indicated that they wanted additional training on ethics issues and would appreciate having a model code of ethics to follow. Accordingly, our Office has prepared a model code of ethics and is developing training on ethics issues for the benefit of local officials.

Comments of Local Officials

The results of our audit and recommendations have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report. Local officials generally agreed with our findings and recommendations.

Introduction

Background

Taxpayers have the right to expect that their local government is run in a transparent and ethical manner, and that government officers and employees are acting in the best interests of taxpayers, and are not conflicted by personal interests. To help ensure that taxpayers' interests remain at the forefront in government operations, General Municipal Law (GML) contains provisions prohibiting municipal contracts in circumstances in which local officials' public responsibilities conflict with their personal business interests. GML requirements are the minimum standards; local governments can also establish their own standards to provide more comprehensive ethical guidance for their officers and employees. Every local official and employee is responsible for becoming knowledgeable about, and complying with, these provisions.

Article 18 of GML requires local governments to adopt codes of ethics setting forth the standards of conduct reasonably expected of officers and employees, and to distribute these codes to all their officers and employees. It is important to note that GML sets the minimum standards for the codes of ethics municipalities are required to adopt. The governing board in each municipality should supplement these minimum standards to meet the municipality's specific circumstances, and routinely review and update the code to ensure it remains a current and meaningful document. To render a code of ethics effective, municipalities must also ensure that procedures are in place to make all officials and employees aware of any updates that occur in the code, and of their responsibilities for complying with the code.

Objective

The objective of our audit was to examine local governments' ethics oversight procedures. Our audit addressed the following related questions:

- Did the local governments adopt and distribute codes of ethics in compliance with GML?
- Did the governing boards develop adequate procedures to monitor compliance with the codes of ethics and with related statutory requirements?

Scope and Methodology

We examined the relevant policies and procedures of 31 local governments located throughout New York State, namely: the Cities of Schenectady, Troy, White Plains and Rochester; the Counties of Columbia, Chenango, Tompkins, Chautauqua, Clinton, Montgomery, Nassau, Westchester, Monroe and St. Lawrence; the Towns of New Baltimore, New Scotland, Barker, Union, Cheektowaga, South Valley, Smithtown, Greenburgh, Greece, Mt. Morris and Clay; and the Villages of Perry, Broadalbin, Plandome Heights, Shoreham, Kiryas Joel and Waterville. We also conducted interviews with employees and officials, reviewed the local governments' codes of ethics, and evaluated the local governments' oversight structure for ethics for the period January 1, 2009 to October 5, 2009.¹

To enhance our audit findings, we sent a survey to the chief executive officers (CEOs) at 418 municipalities and school districts to find out the extent to which these local government units complied with current GML ethics requirements. We received 149 responses from CEOs who self-reported their compliance information. We also sent a second survey to top officials and employees (e.g., Board members and department heads) at the same 418 municipalities and school districts to assess their understanding of their own local government's code of ethics and their general understanding of other provisions in GML related to ethics, and to obtain their opinion about whether their local government promoted an ethical environment. We received 217 responses to our survey of top officials and employees.

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 is included in Appendix B of this report.

Comments of Local Officials

The results of our audit and recommendations have been discussed with local officials and their comments, which appear in Appendix A, have been considered in preparing this report. Local officials generally agreed with our findings and recommendations.

¹ The end date of the audit period for the 31 municipalities varied from September 18, 2009 to October 5, 2009.

Ethics Oversight in New York State Municipalities

Local governments should be transparent and ethical in their operations. Local officials make financial and operational decisions that affect the lives of their constituents, and are therefore responsible for acting in the best interests of those constituents, and without undue personal influences. A local government's adoption of an appropriate code of ethics, and local officials' adherence to its requirements, is critical for establishing and maintaining an ethical environment.

Codes of ethics adopted by local governing boards establish standards of ethical conduct expected of local officials and employees. For example, some local governments require² that high-level employees and officials file annual financial disclosure forms that can help identify occurrences of conflicts of interest. It is essential that local governments review the forms, and examine the information they contain, not only to promote compliance with the filing requirement, but also to verify that officials and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. Local officials' thorough understanding of local disclosure requirements, and their awareness of all the provisions of their own codes of ethics, is fundamental to ensuring meaningful compliance with these adopted standards. Through periodic training on the contents of a local government's code and on any emerging ethical issues, local governments can ensure that all their employees and officials are aware of their responsibility to act in an ethical manner.

We found that gaps exist in local officials' awareness of and compliance with their municipalities' codes of ethics, resulting in a failure to achieve appropriate oversight. For example:

- Of the 20 municipalities we visited that require certain officials and employees to file annual financial disclosure forms to identify potential conflicts of interest, 12 municipalities did not collect all the forms, nine did not make sure the forms were complete, and 14 did not review the forms to identify conflicts of interest.

² Municipalities with populations of 50,000 or more must require certain officers and employees to file annual financial disclosure statements. Smaller local governments may require such disclosure by local action.

- The 31 local governments we visited had adopted codes of ethics, but only 26 of these codes addressed the ethics topics required by the GML; furthermore, 13 percent of the CEOs we surveyed responded that their municipalities had not adopted codes of ethics at all or that they did not know whether a code existed.
- In survey responses, 16 percent of CEOs reported either that the code had not been distributed to all officials and municipal employees, or they did not know whether it had been distributed. Our audit found that 52 percent of the municipalities we visited had not distributed their codes to all officers and employees, as required.
- More than 80 percent of the local governments provided no training to their officers and employees on the provisions of GML and the local government's code of ethics. Survey responses indicate a similar trend statewide, particularly in smaller municipalities. Only 56 percent of local government officials or employees in municipalities of 25,000 or more responded that they had ever attended training on ethics. This percentage drops to 45 percent for respondents representing municipalities with populations under 25,000.

If local governments do not enforce compliance with disclosure requirements, and thoroughly review the information officials and employees report on disclosure forms, taxpayers will have little assurance that local governments are serious about identifying conflicts of interest that could compromise officials' impartiality in decision-making. Furthermore, unless each local government adopts a code of ethics – and ideally a code that covers more than what is minimally required by GML – and vigorously enforces all the code's provisions, there is a higher risk that public assets could be subject to misuse. It is also essential that local governments train their officers and employees about ethics so they know how to recognize and address potential ethical problems. Both the local officials we visited and those who responded to our survey indicated that they wanted additional training on ethics issues and would appreciate having a model code of ethics to follow. Accordingly, our office has prepared a model code of ethics and is developing training on ethical issues.

Annual Financial Disclosures

GML requires counties, cities, towns, villages, school districts and fire districts to adopt a code of ethics that applies to their officers and employees. In addition counties, cities, towns or villages with populations of 50,000 or more must require certain of their officers and employees³ to file annual financial disclosure statements to help ensure that officers and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. Smaller local governments may require such disclosure by local action. The disclosure forms should be designed to obtain information pertinent to officers' or employees' financial involvement in businesses or organizations that may impair their ability to fairly and impartially perform their duties. Our audit found that most municipalities with annual financial disclosure requirements did only the minimum to comply with the annual financial disclosure requirement. We commend two municipalities we visited – Montgomery County and the City of Troy – that continue to require financial disclosure, even though, because of population declines, they are no longer mandated to maintain this requirement.

The governing body of any county or other municipality may establish a board of ethics. The responsibilities of a board of ethics include receiving annual financial disclosure forms from the municipality's officials and employees who are required to file them, and enforcing the filing requirement. Boards of ethics should establish processes to verify the completeness of the forms individuals submit. To verify completeness, boards of ethics should review each form to determine that all relevant questions were answered and follow up on any missing information. Boards of ethics should also take responsibility for reviewing the information contained on the disclosure forms to identify transactions that could pose conflicts of interest. To identify transactions that could pose conflicts of interest, boards of ethics could maintain a list of outside business interests, and supply the list of vendors to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by the GML.

Twenty of the 31 local governments we audited require that their officers and employees file annual financial disclosure statements, and each of these 20 municipalities has established a local board of ethics. However, we found that five of the 20 boards of ethics had not convened for periods ranging from two to 11 years. One county's board has never convened.

³ In general, board members, department heads, policy-makers and local elected officials (except judges or justices)

Furthermore, we found that 14 of the 20 local governments that require annual financial disclosure did not have procedures in place to review the forms to identify transactions that could pose conflicts of interest. Lack of procedures that require review of the submitted information limits the usefulness of this tool. If local governments' boards of ethics do not ensure compliance with filing requirements, or review the information on disclosure forms to identify any conflicts of interest, taxpayers cannot be confident that officers and employees in policy-making positions are free from conflicts of interest.

Filing of Disclosure Forms – In 12 (60 percent) of the 20 municipalities we audited that require annual financial disclosure, many officers and employees who were required to file an annual financial disclosure statement failed to do so. For instance, in one county, 30 individuals (35 percent) who were required to file a form did not file; in one city, 22 people (31 percent) did not file, and in another city, 16 people (18 percent) did not file. We found little or no follow-up procedures in place to obtain these disclosures in most of the municipalities we audited. Furthermore, 13 of the individuals who did not file annual statements were also members of the municipality's governing board or its board of ethics. This is particularly troubling because members of those boards, who should model good practices for other officers and employees, are setting an extremely poor example through their failure to comply with the filing requirement.

While the majority of these 20 local governments did not have adequate procedures to enforce the filing requirement, three local governments had developed aggressive procedures to enforce the filing requirement. For example, in the Town of Greenburgh, the Town Attorney mailed certified letters to the individuals who did not file. The names of the individuals who failed to file were also posted on the town's website. The Town Attorney told us he is conducting an investigation to determine why individuals did not file, and will pursue disciplinary action against non-compliant individuals, if necessary. This aggressive process to pursue compliance was effective and provides a good model for other localities to consider.

Review of Disclosure Forms – We found that the boards of ethics of nine of the 20 units did not review financial disclosure forms to ensure that the forms were complete. For example, five local governments either required that the financial disclosure forms remain sealed, or never opened the forms to review them. We

found that almost half the units we visited do almost nothing with the information on the forms. For example, one county has a procedure requiring that the annual financial disclosure statements remain sealed. In this county, only the board of ethics can review the statement, and such a review can take place only in the event that an inquiry requires the board to examine the information in the statement. The board of ethics in this municipality has not met since it was established in 1998. In another county, officials told us that the board of ethics is only the repository of the financial disclosure forms, and that the board's review and assessment of potential conflicts reported on these forms would not be in compliance with the county's code of ethics. Consequently, officials in these localities never looked at the information on the submitted forms. We reviewed the forms and found that one town official submitted a blank disclosure form, a blatant violation of the Town's filing requirement that the board of ethics did not identify.

When local governments fail to review financial disclosure forms, they cannot identify any conflicts of interest that could pose ethical concerns for municipal officials. In fact, during just 2008 and 2009, our Office's audits of school districts and local governments identified 36 instances of potential or actual conflicts of interest and/or breaches of ethics on the part of elected officials or high-level employees. Examples of such conflicts of interest include the following:

- At one school district, three vendors whose owners were also district employees received more than \$100,000 in district contracts. These employees did not disclose their interest in these contracts to either their supervisors or the school board.
- At another school district, a board member was an officer and part-owner of three corporations that were paid a total of \$85,000 for goods and services. One of these corporations was the sole bidder for contract work that cost the district \$63,000.
- At a municipality, a town employee did not disclose her interest in a \$73,000 contract between her husband's company and the town.

Local government officials can avoid the taint associated with conflicts of interest and promote transparency in their operations by fulfilling their responsibility to review financial disclosure forms in a diligent manner.

Operations of Boards of Ethics – We found that five of the 20 boards of ethics had not convened for periods ranging from two to 11 years. In one county, the board of ethics never convened. In one city, an ethics board member told us he has never met the other ethics board members and has not been asked to attend an ethics board meeting.

However, we also found that several of the local governments we audited had boards of ethics that met periodically. For example, Nassau County’s board of ethics meets at least every two months, and its functions include reviewing and ruling on issues, such as assessing penalties for financial disclosure violations, granting extensions for filing financial disclosure statements, and making determinations of violations of the code of ethics. The board of ethics in the Town of Cheektowaga meets monthly during its annual review of annual financial disclosure statements. In Monroe County and the Town of Greece, the boards of ethics meet once a year and as needed throughout the year to discuss compliance issues, financial disclosure statements and any issues that are brought to their attention. Westchester County’s board of ethics meets quarterly. We reviewed the minutes of one of those meetings at which the board welcomed new members, informed them about their responsibilities as board members, and discussed the number of financial disclosure forms that had been filed.

When annual financial disclosure forms are not filed and reviewed, officials cannot be sure that those officers and employees who are acting in the public interest are not using their positions to further their private financial interest. Therefore, there is an elevated risk that potential conflicts will go undetected.

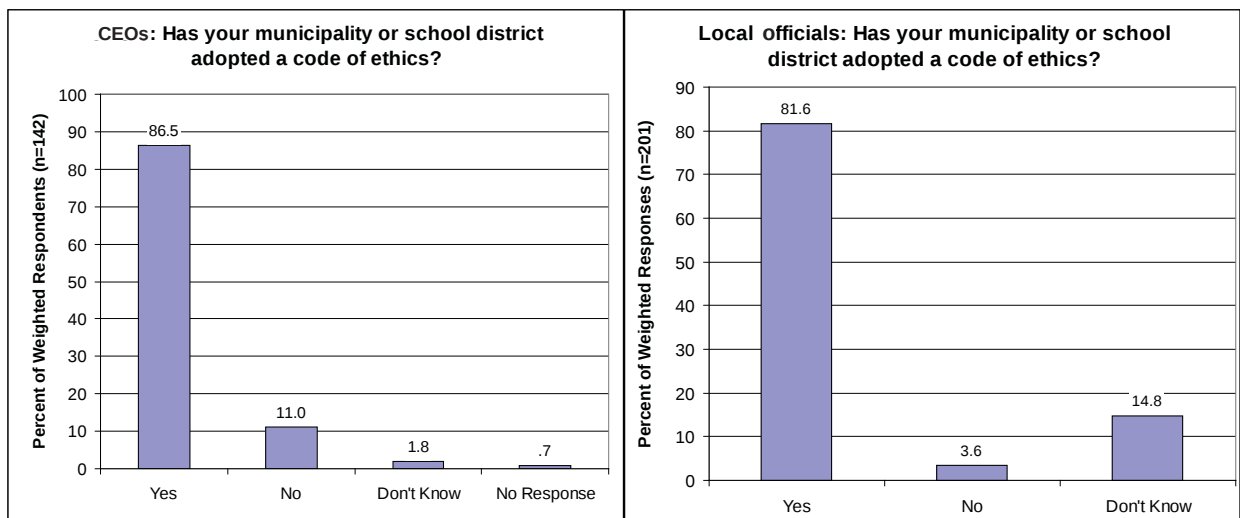
Compliance with GML – Codes of Ethics

GML requires counties, cities, towns, villages, school districts and fire districts to adopt a code of ethics that applies to their officers and employees.⁴ The code of ethics adopted by the governing board must set forth standards of conduct with respect to disclosure of interests in legislation before the local governing body, holding of investments in conflict with official

⁴ Codes of ethics adopted by fire districts must also apply to the volunteer members of their fire departments.

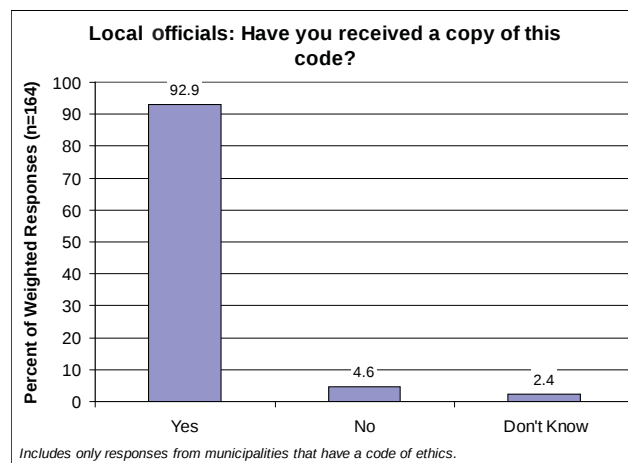
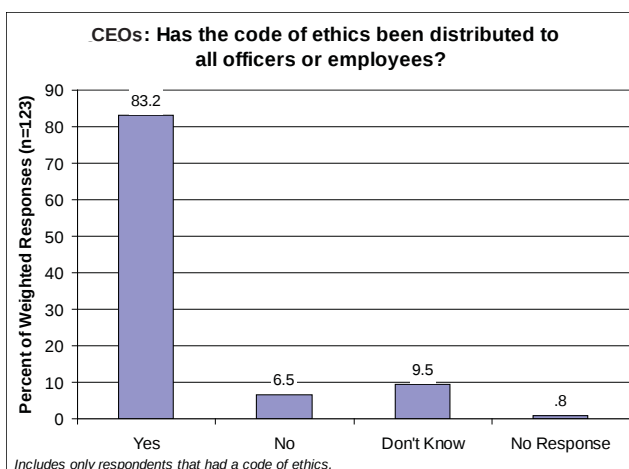
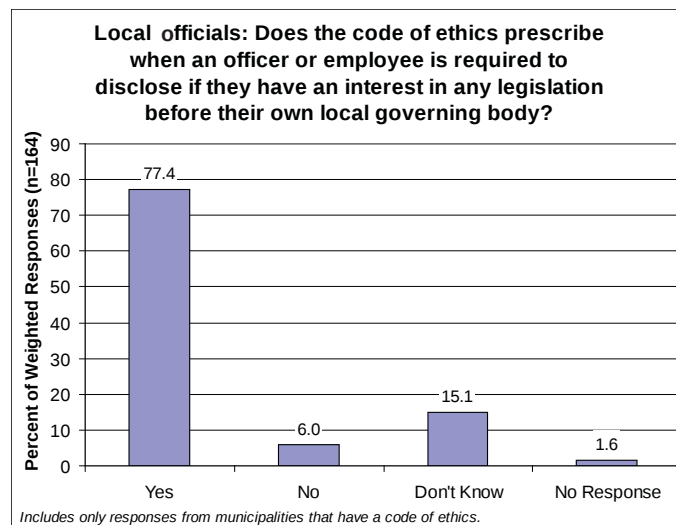
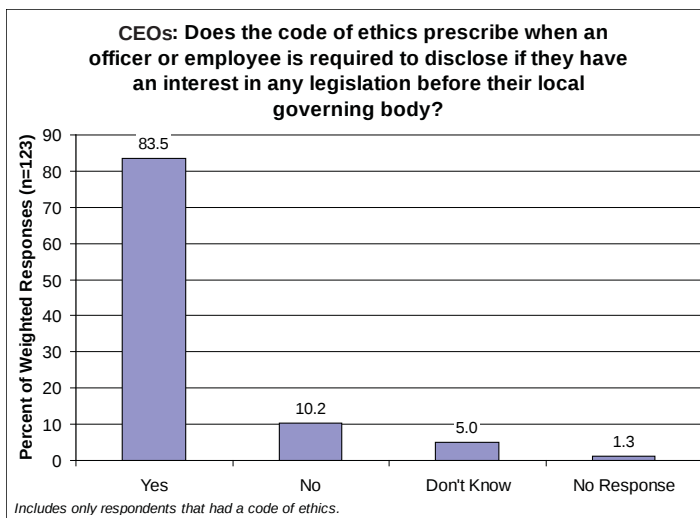
duties, private employment in conflict with official duties, and constraints on future employment. The chief executive officer of every municipality is required to ensure that a copy of the municipality's code is distributed to every officer and employee of the municipality. If local governments do not ensure that every officer and employee receives a copy of their codes of ethics, including updates to the codes, all officers and employees may not be aware of their duties and responsibilities under the codes of ethics.

We found that all 31 of the local governments in our audit adopted a code of ethics, and that 26 (or 83 percent) of these adopted codes of ethics addressed all four of the issues required by the GML. In survey responses, 87 percent of CEOs and 82 percent of local officials indicated that their local governments had adopted codes of ethics.



However, we found that from 13 to 18 percent of the local government leaders report that they are operating without a code of ethics, either because they did not adopt one, or because they were unsure whether one had been adopted. In responding to a survey question that asked whether the local government's code contained one of the four elements required by GML,⁵ about 83 percent of CEOs and 77 percent of local officials reported that their codes of ethics included this element.

⁵ The survey question asked whether the local government's code of ethics prescribes when officers/employees are required to disclose whether they have an interest in legislation before the local governing body.



In addition, we found that local governments did not always provide their codes of ethics to officers and employees, as required by GML. Specifically, 16 (52 percent) of the local governments we visited did not ensure that their codes of ethics, or updates to their codes of ethics, were distributed to all employees and officials. For example, one county sent the code to only those officers and employees who were required to file annual financial disclosure forms; one city distributed the section of the city's code that addresses GML ethics requirements only to officials who took an oath of office, rather than to all employees; one town gave the code only to full-time employees during their orientation.

While respondents to our survey indicated a higher rate of code distribution, even this self-reported information indicates a gap in compliance: 83 percent of CEOs reported that their codes had been distributed to all officers and

employees, and 93 percent of local officials reported that they had received a copy of the code.

Of the local governments we visited, most of the 15 municipalities that did distribute their codes of ethics had procedures intended to ensure that all officers and employees received them. For instance, most of those local governments required officers and employees to sign an acknowledgement that they received a copy of the code. However, in several cases, this procedure was ineffective because, while it obtains some employees' signatures to indicate their receipt of the code, it does not ensure that all officers and employees received and signed for the code. For example, we found that one town did not have written documentation that the deputy clerk, a DPW employee, a code enforcement officer, and part-time law enforcement staff received a copy.

A few local governments use measures to ensure that the code is distributed on an annual basis. For example, Westchester County annually e-mails its code of conduct, which includes the code of ethics, to all officials and employees, who are required to review it and electronically acknowledge that they have read it. St. Lawrence County also requires its officers and employees to acknowledge their review of the county's code of ethics on an annual basis. We reviewed these procedures and found them to be well-designed and operating appropriately. In the Town of Greece, officials distributed a copy of the code of ethics to every officer and employee with their September 10, 2009 paycheck; each time the code of ethics is amended, the updated code is distributed in the same manner.

Other Ethics Concerns

While not specifically required by GML, we believe that a local government's code of ethics, consistent with GML, should also provide guidance about other ethical issues, such as gifts and favors, recusal,⁶ disclosure of confidential information, misuse of municipal resources, and hiring and supervising relatives. Further, to ensure that officers and employees are familiar with ethics laws and emerging ethics issues, the local government should offer training on these issues.

The local government could also notify employees about whistle-blower provisions that exist in the Civil Service Law. For example, under certain circumstances, Civil Service Law provisions protect an employee from dismissal or other

⁶ To remove oneself from participation in a decision to avoid a conflict of interest

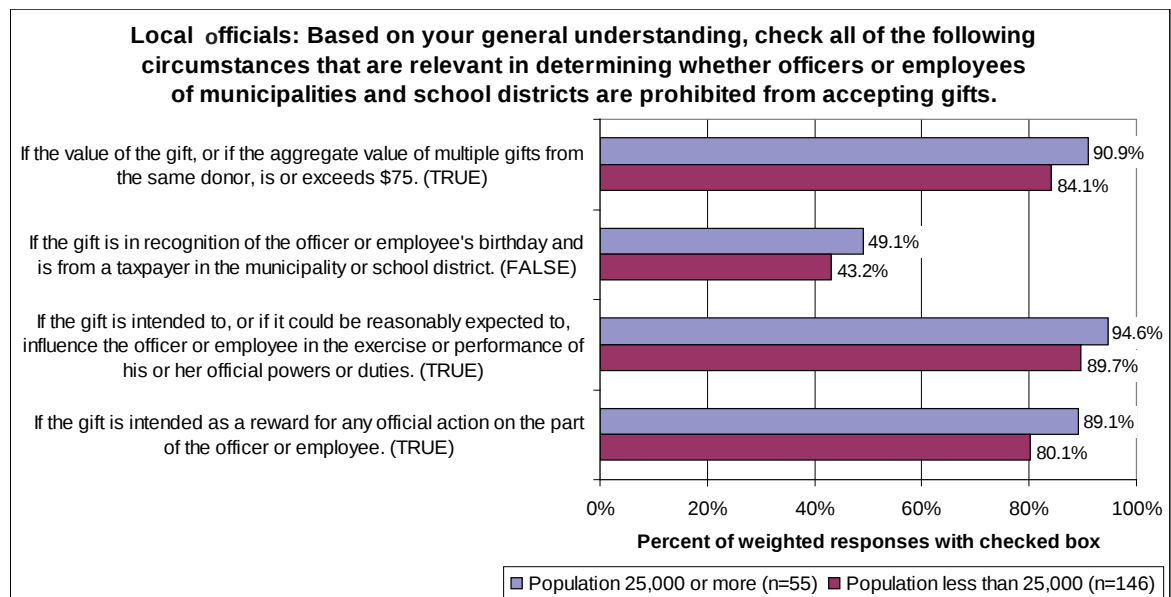
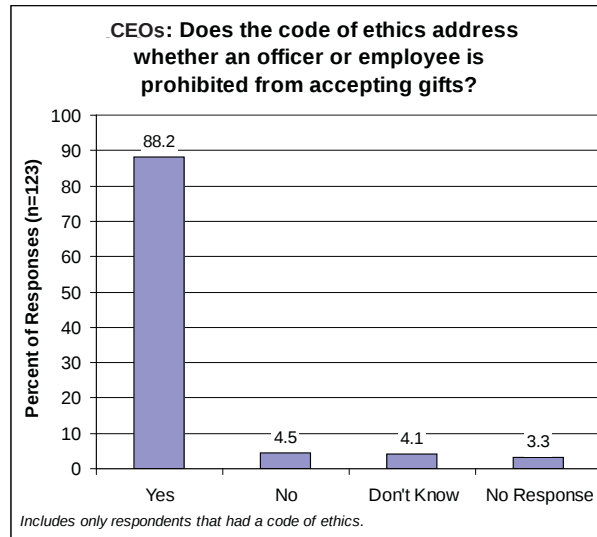
disciplinary action by the local government because the employee has disclosed (1) information regarding a violation of a law, rule or regulation that creates and presents a substantial and specific danger to public health or safety, or (2) information that the employee reasonably believes to be true and reasonably believes to be an “improper governmental action.” Local officials can reinforce awareness of whistle-blowing protections by referring to them in the code of ethics or other board policies.

Guidance on Other Issues - While most of the 31 local governments we visited included language in their codes to address gifts and favors, the codes did not include guidance about other ethical issues. For example, 61 percent of the local governments’ codes did not address misuse of municipal resources, 45 percent did not address recusal, and 84 percent did not address the hiring and supervision of relatives. We believe the omission of these elements is a serious weakness in the codes of ethics because they address a range of issues that local officials and employees may encounter on a regular basis.

We found that 21 of the 31 local governments we visited did include language in their codes on at least one of these other ethical issues. For instance, St. Lawrence County’s ethics law provides that “a County officer or employee may not use government letterhead, personnel, equipment, supplies, or resources for a non-governmental purpose nor may a County officer or employee do personal or private activities during times when he or she is required to work for the government.” Westchester County’s code of conduct states that “a supervisory or management employee may not participate in the appointment or recommend the appointment of an immediate family member, domestic partner, and/or a person with whom the employee has a close personal or business relationship to a position in any department, office, bureau or division over which he/she has control.” Such requirements, which go beyond the minimum standards established by law, help convey a tone or concern for ethical behavior for all levels within the government.

In survey responses, the majority of the CEOs reported that their codes of ethics addressed other ethical issues, such as gifts and favors. Additionally, survey responses from local government officials and employees indicated that they generally had a good, but not complete, grasp of ethical concerns regarding gifts. For example, responses to questions related to the circumstances when accepting gifts is prohibited and when an official or employee is deemed to have an interest in a contract, show that

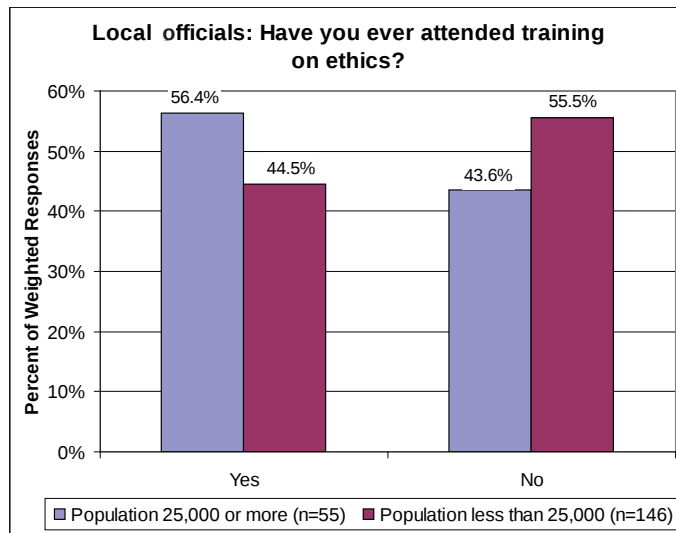
the majority of respondents – but not all of them - had a good understanding of current restrictions. Our survey also showed a lack of training on ethical issues. Therefore, we are concerned that an understanding of ethical concerns, while present at the highest levels in government, may not permeate other levels of local government.



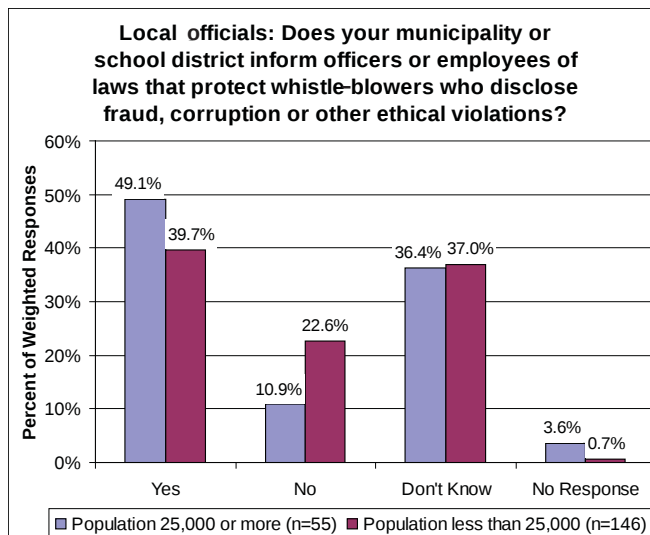
Training – It is important that local governments offer training on their codes of ethics and emerging ethics issues, to help local officials and employees understand and comply with ethics requirements. However, we found that 84 percent of the local governments we visited did not offer training to officers and employees. In many instances, local officials told us they did not know where such training was available, or how to provide it.

Many officials also indicated they would like to have guidelines on how to provide ethics training.

Our survey results reinforced our finding on the lack of training on ethics issues. Survey respondents indicated, both in answers to direct questions and in comments on the survey, that local governments need additional training and information about what is currently required under GML. In municipalities with a population of 25,000 or more, only 56 percent of local government officials and employees responded that they had attended ethics training. This percentage dropped to 45 percent in municipalities with a population of less than 25,000.

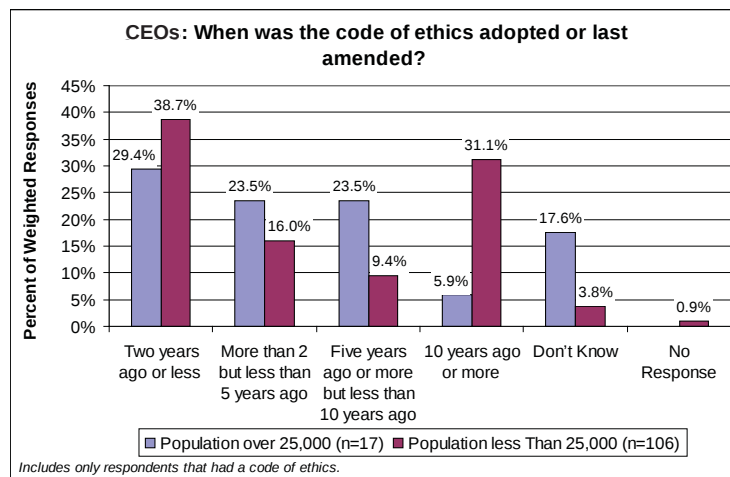


Whistle-blower Protection – As a good management practice, local governments could notify employees about whistle-blower provisions that exist in the Civil Service Law. Without knowledge of the protections afforded by whistle-blower provisions, local officials and employees may be unduly inhibited from reporting violations of law or other improper governmental action.



Both audit tests at the local governments we visited and survey responses reported by local officials indicated that many local governments have not informed local officials and employees about whistle-blower protection. We found that 77 percent of the local governments we audited did not notify officers and employees of whistle-blower protections. Results of our survey showed that 49 percent of top local officials and employees in larger municipalities, and 40 percent in smaller municipalities, reported that they had been informed about whistle-blower protections.

However, a number of local governments had initiated efforts to make it easier for employees to report what they believe may be unethical practices. For example, Monroe County has set up a special hotline to encourage County employees to report suspected cases of unethical or illegal behavior by county officials or co-workers. We encourage local governments to inform their officials and employees about whistle-blower protections, and to develop processes that employees can use to report potentially unethical behavior.



Revisions to the Code of Ethics – Once in place, a code of ethics should be reviewed periodically to ensure that it still adequately addresses the code of conduct that all local government officials and employees are expected to abide by. Our survey responses revealed that, while the majority of local governments and school districts had adopted a code of ethics, less than 40 percent of those had been adopted or last revised in the past two years. In smaller municipalities (those with populations of under 25,000), more than 30 percent of CEOs indicated that the code had been adopted or last revised more than 10 years ago.

Recommendations

1. Ethics boards should verify and ensure that all individuals covered by annual financial disclosure requirements file completed annual financial disclosure statements.
2. Local officials should develop procedures for using the information contained on annual financial disclosure statements to prevent or detect the occurrence of transactions involving conflicts of interest.
3. Local officials should ensure that their codes of ethics, and any updates to the codes, are distributed to all employees and officials.
4. The governing boards should review their codes and, consider revising them beyond the minimum requirements of GML, such as by including provisions relating to gifts and favors, abstention and recusal, disclosure of confidential information, misuse of municipal resources, and hiring and supervising relatives.
5. Local officials should offer training to all officers and employees regarding their codes of ethics and emerging ethics issues, and ensure that officers and employees are made aware of whistle-blower protections.

APPENDIX A

RESPONSES FROM LOCAL OFFICIALS

At the conclusion of our audit at each of the 31 municipalities we visited, we discussed our findings and recommendations local officials. We excerpted the following from local officials' comments.

Distribution of Municipalities' Codes of Ethics

Officials in Columbia and Monroe Counties, the Cities of Rochester and Schenectady, the Towns of Smithtown and Mt. Morris, and the Villages of Waterville and Shoreham all indicated that they will take steps to annually distribute their respective codes of ethics to all officials and employees.

Other Code Elements and Ethics Training

Officials in Tompkins, St. Lawrence, and Monroe Counties, the Cities of Schenectady and Troy, the Towns of New Baltimore, New Scotland, Mt. Morris, and Smithtown, and the Villages of Waterville and Perry all stated that they will take steps to update and improve their existing codes of ethics. In some cases, officials said they were not aware that their codes should address elements other than the minimum number required by GML, or that they should inform employees about whistle-blower protections. Many of these local officials also requested help with training resources, including a model code of ethics and guidelines on how to provide ethics training in a cost-effective manner.

Town of South Valley officials said their Town is small, and they see no need to amend their code of ethics to address additional issues, like recusal and the hiring and supervision of relatives, or to have a formal policy for disclosing outside employment. Officials also said it is not feasible for them to develop ethics training because they have only two employees, and the training currently available is too expensive.

Annual Financial Disclosures

Officials in Columbia and St. Lawrence Counties, the Cities of Schenectady and Troy, the Towns of Cheektowaga, Union and Clay indicated that they plan to develop new, stronger procedures to enforce compliance with the annual financial disclosure requirement, and obtain any outstanding forms that officials and employees have not yet submitted.

Westchester County officials told us that their Code of Ethics does not allow for the review of financial disclosure statements. County officials state that their Ethics Board is, by statute, solely the repository of these forms. County officials claim that the Ethics Board's review and assessment of potential conflicts would not be in compliance with the County's Code of Ethics.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

During this audit, we examined the relevant policies and procedures of 31 local governments located throughout New York State, conducted interviews with employees and officials, reviewed the local governments' codes of ethics, and evaluated the local governments' oversight structure for ethics for the period January 1, 2009 to October 5, 2009. To accomplish the objective of this audit, we performed the following procedures:

- We interviewed appropriate local officials to gain an understanding of their ethics structure.
- We reviewed the codes of ethics of the 31 local governments to determine if the codes were in compliance with GML and addressed other ethical issues.
- We interviewed appropriate local officials and employees to determine: if, and how, the codes of ethics were distributed to officers and employees; if the local government provided training to its officers and employees and notified them of available whistleblower protections; how often the Boards of Ethics met and what they discussed; if annual financial disclosure forms were filed and reviewed; and if any code violations had occurred in the past three years.
- We reviewed annual financial disclosure forms to determine how many officers and employees filed a form. We also reviewed them to determine if employees completed the forms. If the statements were sealed, we opened them satisfy our audit objective.

To ascertain local government officials' and employees' understanding of the ethics provisions in the GML, we also conducted two surveys. The first survey was sent electronically⁷ to a random sample of 418 Chief Executive Officers (CEOs) of counties, cities, towns, villages and school districts, and the second survey was sent to a random sample of 862 high-level local government officials and employees in counties, cities, towns, villages and school districts.

The first survey of CEOs was designed to measure compliance with selected requirements in Article 18 of the GML. The second survey was designed to ascertain local government officials' general understanding of GML Article 18 and their sense of whether their place of employment promoted a "culture of ethics."

We received 149 responses (35.6 percent) from the 418 CEOs we surveyed. The majority of respondents were CEOs of school districts (47.3 percent) and CEOs in smaller municipalities or districts. Of the 862 high-level local government officials and employees we surveyed, we received 217 responses (25.2 percent). The majority of respondents represented towns (33.3

⁷ In administration of the electronic surveys, individuals were selected from OSC files. Only those municipalities and employees for whom e-mail contact information was available were included in this survey. The units that were selected for audit were also excluded from the surveys.

percent), served as officials in smaller municipalities with populations under 25,000 (76.6 percent), and were Board or Council members (28.0 percent).

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C

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