

# Chautauqua County

## Ethics Oversight

DECEMBER 2020



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

# Contents

---

<b>Report Highlights</b> . . . . .	<b>1</b>
<b>Ethics Oversight</b> . . . . .	<b>2</b>
How Can Local Governments Establish Proper Ethics Oversight? . . . . .	2
The County Established an Ethics Board and Adopted a Code of Ethics . . . . .	3
The Code of Ethics Complied with GML but the CEO Did Not Post the Conflict of Interest Statute . . . . .	3
The Ethics Board Did Not Receive Ethics Training . . . . .	3
What Are the Responsibilities of a Board of Ethics for Reviewing the Code of Ethics and Disclosure Statements?. . . . .	4
The Ethics Board Did Not Adequately Review Disclosure Statements for Potential Conflicts of Interest . . . . .	6
The Ethics Board Periodically Reviewed the Code of Ethics and Prepared Annual Reports . . . . .	9
What Do We Recommend? . . . . .	9
<b>Appendix A: County Code of Ethics Information</b> . . . . .	<b>11</b>
<b>Appendix B: Response From County Officials.</b> . . . . .	<b>12</b>
<b>Appendix C: OSC Comments on the County’s Response.</b> . . . . .	<b>18</b>
<b>Appendix D: Audit Methodology and Standards.</b> . . . . .	<b>19</b>
<b>Appendix E: Resources and Services</b> . . . . .	<b>21</b>

# Report Highlights

## Chautauqua County

### Audit Objective

Determine whether Chautauqua County (County) officials used resources to meet certain ethics oversight standards.

### Key Findings

County officials did not meet certain ethics oversight standards:

- The County Executive did not visibly post certain conflict of interest sections of New York State General Municipal Law (GML) in three buildings tested.

The Board of Ethics (Ethics Board) did not:

- Adequately administer the County's disclosure system that is intended to foster transparency and help identify conflicts of interests.
  - While all required annual statements of financial disclosure (financial statements) were filed, six Legislator (16 percent), 49 officer and employee (10 percent) and nine other required filer (21 percent) annual statements of financial disclosure (disclosure statements) were filed late.
- Compare disclosed business interests to vendor payments or compile a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that may be prohibited by GML.

### Key Recommendations

- Ensure that all annual disclosure statements are filed timely and are carefully reviewed for potential conflicts of interest.
- Ensure that the conflict of interest sections of GML are visibly posted in all County buildings.

County officials disagreed with certain aspects of our findings and recommendations, but indicated they planned to implement some of our recommendations. Appendix C includes our comments on issues raised in the County's response letter.

### Background

The County is located in the Western region of New York. The County is governed by the County Legislature (Legislature) composed of 19 elected Legislators, one of whom serves as the Chair.

The County Executive is the County's chief executive officer (CEO), responsible for the administration of County affairs.

The Legislature established an Ethics Board responsible for providing ethics oversight. The County Attorney provides legal counsel to the Legislature and the Ethics Board.

#### Quick Facts

Population	134,905
Officers and Employees	1,382
Required Disclosure Statement Filers	
2017	272
2018	282

### Audit Period

January 1, 2017 – September 30, 2018

# Ethics Oversight

---

## How Can Local Governments Establish Proper Ethics Oversight?

A county's governing body must establish a code of ethics to set forth the standards of ethical conduct reasonably expected of county officers and employees. The code of ethics must address certain provisions including disclosure of interest in legislation before the governing body, holding of investments in conflict with official duties, private employment in conflict with official duties and future employment.

To reduce risk that officers' and employees' actions could violate a county's code of ethics and public assets could be subject to misuse, the governing body should adopt a code of ethics that addresses each of the four required statutory provisions of GML and vigorously enforce the code provisions.<sup>1</sup>

Within the code of ethics, the governing body may also set forth other standards of ethical conduct such as provisions addressing nepotism, public disclosures for recusals and abstentions and the proper use of municipal resources.<sup>2</sup> The county's CEO is responsible for distributing a copy of the code of ethics to every county officer and employee. Although not required, the county could also post the code of ethics on the county website.

In addition to establishing a code of ethics, counties with a population of 50,000 or more are required to have certain individuals annually complete a financial disclosure statement. Filing annual disclosure statements helps increase transparency about the private interests and activities of officers and employees, which may identify potential conflicts of interest.

A board of ethics may be established by the governing body to administer a system to maintain the financial disclosure statement filings.<sup>3</sup> The board of ethics, if established, should develop procedures to review and examine the financial disclosure statements filed with the county, to promote compliance with the filing requirement, and verify that officials and employees are impartial and free from conflicts of interest in fulfilling their public responsibilities. A board of ethics can help ensure that the local government operates in a transparent and ethical manner, and local government officers and employees act in the best interests of taxpayers and are not conflicted by personal interests.

The governing body may also develop additional standards of conduct to provide more comprehensive ethical guidance to meet a county's specific circumstances. For instance, the governing body may establish procedures to ensure that county

---

1 New York State General Municipal Law (GML), Section 806.

2 State Comptroller's Model Code of Ethics – Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>.

3 GML provides that the board of ethics, if established by the governing body, is responsible for receiving the annual financial disclosure statements.

---

officers and employees receive ethics compliance training, including notifying officers and employees of the whistle-blower provisions provided by State Law. In addition, the governing body could require that every officer and employee attest to receiving and reviewing the code of ethics at the time of their election or appointment and at least once every five years.

To help ensure proper ethics oversight, the CEO is responsible for posting a copy of certain portions of the conflict of interest statute in each county building.<sup>4</sup> The statute must be posted in a place visible to its officers and employees.

### **The County Established an Ethics Board and Adopted a Code of Ethics**

The County established an Ethics Board, which is composed of members appointed by the County Executive who are confirmed by the Legislature. The Ethics Board is responsible for receiving financial disclosure statements. The County adopted a code of ethics that provides general authority for the Ethics Board to ensure that the financial disclosure statements are filed and complete.

### **The Code of Ethics Complied With GML but the CEO Did Not Post the Conflict of Interest Statute**

The Legislature adopted a code of ethics and posted it on the County website. The code of ethics addressed each of the four required provisions set forth in GML.<sup>5</sup> While the CEO is required to visibly post certain sections of GML in each County building, we found that the statutory provisions were not posted in the three buildings tested.

The Assistant County Attorney told us that she believed the County had previously posted the sections of GML in these buildings and that she witnessed the statute being posted in one of these buildings. However, she was unsure why GML sections were no longer posted in the buildings tested.

### **The Ethics Board Did Not Receive Ethics Training**

County officers and employees received annual ethics compliance training, which included an overview of the code of ethics and whistleblower protections. However, the Ethics Board did not receive similar training.

---

<sup>4</sup> GML, Section 807, requires the posting of GML Sections 800 through 809 in each public building.

<sup>5</sup> GML, Section 806, refer to Appendix A, Figure 4.

---

Therefore, in an effort to help ensure proper ethics oversight, the Legislature may wish to have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics. For example, training could relate to the provisions of Article 18 of GML, codes of ethics, annual financial disclosure and decisional law relating to conflicts of interest and ethics.

While not required by the code of ethics, the County's operations assistant (assistant) told us that, in addition to receiving ethics training, newly hired employees sign a new hire orientation checklist, which acknowledges receipt of the code of ethics. We reviewed the checklist for 40 newly hired employees during our audit period.

We found that 37 employees signed the checklist to show that they received the code of ethics. While officials were unable to provide us with the remaining three checklists, they provided us with evidence that two of these employees took a training class that included an overview of the code of ethics. Officials deemed the third individual a contractor for the County and therefore not subject to the code of ethics.

Although not required by law, the Legislature could reinforce officers' and employees' awareness of the code of ethics by having it visibly posted in all County buildings and may also wish to consider requesting that all officers and employees attest in writing to their review of the code of ethics at the time of their hire, election or appointment and at least once every five years. Further, County officers could distribute the code of ethics to all officers and employees whenever the code of ethics is amended.

Unless the Legislature vigorously reinforces employee awareness of the code of ethics and ensures that the conflict of interest statute is posted in each building, there is a higher risk that officers' and employees' actions may violate the code of ethics and public assets could be subject to misuse.

### **What Are the Responsibilities of a Board of Ethics for Reviewing the Code of Ethics and Disclosure Statements?**

A board of ethics is responsible for making recommendations with respect to drafting, adopting or amending the code of ethics, upon the request of the governing body. Therefore, a periodic review of the code of ethics by the board of ethics may be appropriate to help ensure the code continues to comply with GML. If requested, the board of ethics may also provide recommendations to the governing body as it relates to other ethical considerations that may help ensure ethical awareness for officers and employees.

---

In addition, the responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements. The board of ethics may also develop procedures to review and examine the financial disclosure statements to help ensure that the filings are complete.

When a board of ethics is established by the governing body to administer an annual financial disclosure system, the board of ethics should establish a process to verify that all required filers have submitted their disclosure statement with the board of ethics. In addition, the board of ethics should ensure that the disclosure statements submitted by the required filers are complete.

To help verify the filing and completeness of the disclosure statements, the governing body could include procedures for an appointed official or support staff to assist the board of ethics in ensuring that each financial disclosure statement is filed, reviewed, all questions are addressed and any inconsistencies or missing information are followed-up on.

In addition, the board of ethics should develop procedures to help ensure that disclosure statements are reviewed in order to identify transactions that could pose conflicts of interest. For example, boards of ethics could maintain a list of filers' outside business interests, and supply the list to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.

Further, the board of ethics could obtain a list of vendors from the accounts payable department to reference during their review of the disclosure statements to help it identify potential conflicts of interest. If local governments' boards of ethics do not ensure compliance with filing requirements or review the information on disclosure statements to identify any conflicts of interest, taxpayers have less assurance that officers and employees in policy-making positions are free from conflicts of interest.

The County code of ethics establishes certain procedures for the Ethics Board to administer the annual financial disclosure system. For instance, the code of ethics identifies certain individuals, based on their job title, who are responsible for filing a disclosure statement. In addition, the code of ethics provides that other individuals, responsible for approving vouchers, purchase orders, contracts or payroll, are also responsible for filing a disclosure statement. In addition, public officers identified in the code of ethics are to file a disclosure statement within 30 days of taking office and no later than April 30 each year thereafter.

The County Executive's office is responsible for receiving and retaining the disclosure statements on the Ethics Board's behalf and making the disclosure statements available to the Ethics Board at all times. Further, the code of ethics provides that the County Executive is responsible for verifying that every required filer has filed their annual disclosure statement before May 15 each year.

---

...[T]he responsibilities of a board of ethics include administering a system to receive annual financial disclosure statements.

---

---

Therefore, the Ethics Board should verify with the County Executive's office that all disclosure statements are complete and filed on time.

The County code of ethics provides that the Ethics Board is responsible for reviewing all disclosure statements. Therefore, the Ethics Board should review the disclosure statements and address any actual or implied conflicts of interests identified in the disclosure statements. When the Board is satisfied with the content and completion of the disclosure statements, the Ethics Board, in accordance with the code, is to return the statements to the County Executive's office, which in turn files the original statements with the County Clerk and electronic copies with the Clerk of the Legislature.

### **The Ethics Board Did Not Adequately Review Disclosure Statements for Potential Conflicts of Interest**

Although all required disclosure statements were filed and complete in 2017 and 2018, some disclosure statements were filed late. We found that 16 percent of Legislator disclosure statements were filed late in 2017 and 2018 (Figure 1). Similarly, 10 percent of officer and employee (Figure 2) and 21 percent of other required filer (Figure 3)<sup>6</sup> disclosure statements were filed late during 2017 and 2018.

In 2017 and 2018, 19 Legislators were required to file disclosure statements and did so. However, in 2017 six Legislators filed late.

In 2017, 232 employees were required to file. However, 22 filed late and because one individual's disclosure statement was not date-stamped, we were unable to determine when it was received. In 2018, 241 employees were required to file. However, 27 filed late and because one individual's disclosure statement was not date-stamped, we were unable to determine when it was received.

In 2017, 21 other individuals associated with the County were required to file. However, six filed late. In 2018, 22 other individuals associated with the County were required to file. However, three filed late.

---

Although all required disclosure statements were filed and complete in 2017 and 2018, some disclosure statements were filed late.

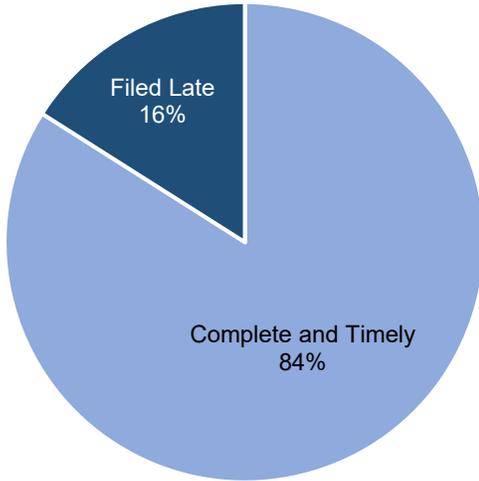
---

---

6 Other required disclosure statement filers included the following: members of the Board of Health, Planning Board and County Sewer and Water Boards.

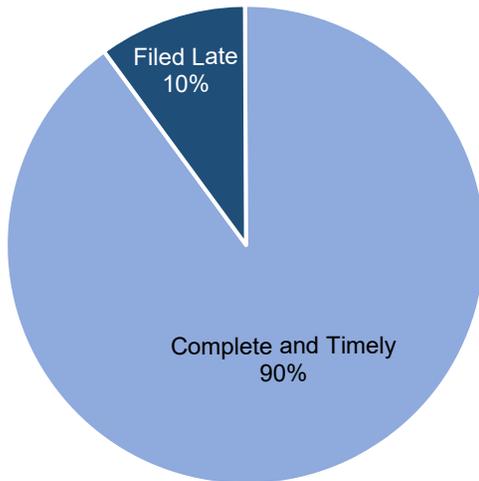
**FIGURE 1**

**County Legislature  
Annual Financial Disclosures  
2017 and 2018**



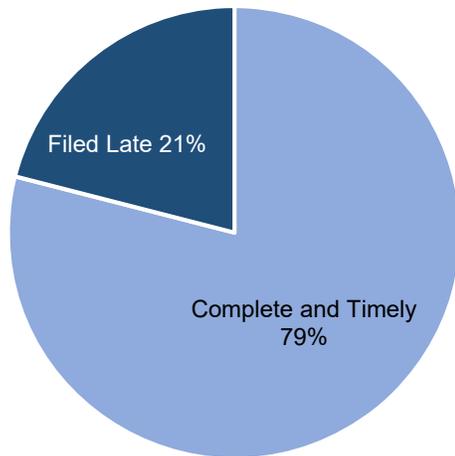
**FIGURE 2**

**Officer and Employee  
Annual Financial Disclosures  
2017 and 2018**



**FIGURE 3**

**Other Individuals Associated With the County  
Annual Financial Disclosures  
2017 and 2018**



An assistant, within the County Executive’s office, told us that she serves as the liaison to the Ethics Board. The assistant maintained a list of individuals required to file, pursuant to the code of ethics, sent the disclosure forms to the required individuals and received completed disclosure statements from the required filers. After the Ethics Board completes its review of the disclosure statements, it returns the disclosure statements to the assistant who sends the originals to the County Clerk’s office and submits scanned copies to the Clerk of the Legislature.

The assistant monitored the list of required filers against submitted disclosure statements and followed up with individuals who had not filed. If individuals failed to file or submitted incomplete information, the assistant and the Ethics Board Chair prepare letters that indicate the deficiencies noted in the disclosure forms, based on any known or missing information identified during the Ethics Board’s review, or if a form has not been filed. These letters are then mailed to individuals to make corrections or as a reminder of the requirement to file.

The assistant told us that the Ethics Board reviewed disclosure statements for completion and the Ethics Board Chair told us that the Ethics Board reviewed the disclosure statements for content and completion. However, the Ethic Board Chair also told us that the Ethics Board’s review of content is limited to the Ethics Board’s knowledge of individuals’ information that should be reported in the disclosure statements.

---

Although not required to do so, neither the assistant nor the Ethics Board compared disclosed business interests to vendor payments or compile a list of filers' outside business interests for the purchasing department to identify potential interests in contracts that may be prohibited by GML. Under these circumstances, there is an increased risk that potential conflicts of interest were not identified and/or not reported to the Ethics Board.

Without careful review of the information reported on disclosure statements and procedures to identify transactions that could pose a conflict of interest, taxpayers have less assurance that the County has a strong stance on transparency and identifying potential conflicts of interest of its officers and employees that could compromise impartiality in decision-making.

### **The Ethics Board Periodically Reviewed the Code of Ethics and Prepared Annual Reports**

In accordance with the County code of ethics, the Ethics Board must meet at least four times a year, prepare an annual report and recommend changes or improvements to the code of ethics. The Ethics Board met four times each year, prepared annual reports and periodically conducted a review of the code of ethics during our audit period. In January 2017, the Ethics Board reviewed the code of ethics to be in effect for 2017. In December 2017, the Board of Ethics reviewed the code of ethics to be in effect for 2018.

The Ethics Board's periodic review of the code of ethics helped ensure it adequately addressed the expected conduct for all officers and employees including the required standards stipulated by law.

### **What Do We Recommend?**

The Legislature should:

1. Have Ethics Board members complete training on the provisions of law relating to conflicts of interest and ethics.
2. Develop procedures to provide for a more thorough and meaningful review of the contents of the disclosure statements in an effort to better identify transactions that could pose conflicts of interest.
3. Visibly post the code of ethics in each County building.
4. Have all officers and employees attest in writing to the receipt and review of the code of ethics at least every five years and upon any amendment to the code of ethics.

---

The Ethics Board ... periodically conducted a review of the code of ethics during our audit period.

---

---

The County Executive should:

5. Visibly post GML Sections 800-809 of the conflict of interest statute in each County building.

The Ethics Board should:

6. Obtain a list of vendors from the accounts payable department to reference during its review of the disclosure statements to help identify potential conflicts of interest and maintain a list of filers' outside business interests to supply to appropriate purchasing department personnel for their use in identifying potential interests in contracts that would be prohibited by GML.
7. Verify that all individuals covered by annual disclosure statement requirements file a timely disclosure statement.
8. Carefully review information contained on the disclosure statements to identify interests that could pose a conflict of interest.

# Appendix A: County Code of Ethics Information

**Figure 4: Required Code of Ethics Provisions<sup>a</sup> and Other Ethical Considerations<sup>b</sup>**

Required Provisions	Included in the County's Code of Ethics?
<b>Disclosure of Interests in Legislation Before the Local Governing Body</b>	Yes
<b>Future Employment</b>	Yes
<b>Holding of Investments in Conflict With Official Duties</b>	Yes
<b>Private Employment in Conflict With Official Duties</b>	Yes
<b>Other Ethical Considerations</b>	
<b>Applicability</b>	Yes
<b>Confidential Information</b>	Yes
<b>Definitions</b>	Yes
<b>Enforcement</b>	Yes
<b>Effective Date</b>	Yes
<b>Establishing a Board of Ethics</b>	Yes
<b>Gifts</b>	Yes
<b>Interests in Contracts</b>	Yes
<b>Nepotism</b>	Yes
<b>Political Solicitations</b>	Yes
<b>Posting and Distributing the Code of Ethics</b>	No
<b>Prohibition on Use of Municipal Position for Personal or Private Gain</b>	Yes
<b>Purpose of the Code of Ethics</b>	Yes
<b>Recusal and Abstention</b>	No
<b>Ethics Board Members Term Limits<sup>c</sup></b>	Yes

a GML, Section 806

b Refer to OSC's Model Code of Ethics for Local Governments available at: <https://www.osc.state.ny.us/localgov/pubs/ethics.htm>.

c Not included within OSC's Model Code of Ethics for Local Governments but should be considered as a best business practice

# Appendix B: Response From County Officials

---



PAUL M. WENDEL, JR.  
County Executive

## CHAUTAUQUA COUNTY OFFICE OF THE COUNTY EXECUTIVE

---

Gerace Office Building – 3 N. Erie St. – Mayville, NY 14757-1007  
(716) 753-4211 – FAX (716) 753-4756 – [wendelp@co.chautauqua.ny.us](mailto:wendelp@co.chautauqua.ny.us)  
[www.co.chautauqua.ny.us](http://www.co.chautauqua.ny.us)

October 8, 2020

via e-mail to: [muni-binghamton@osc.ny.gov](mailto:muni-binghamton@osc.ny.gov)  
Julie Landcastle, Chief Examiner  
Statewide Audit Unit  
New York State Office of the State Comptroller  
Binghamton State Office Building  
44 Hawley Street, Room 1702  
Binghamton, NY 13901

Re: Ethics Oversight Audit of Chautauqua County  
Audit Time Period January 1, 2017-September 30, 2018  
Audit Conducted May-June 2019, Exit Conference September 15, 2020

Dear Ms. Landcastle:

Enclosed is Chautauqua County's response to the referenced Ethics Oversight Audit.

We would like to thank the auditors who conducted the on-site audit of the County. They were courteous, respectful, and highly complimentary of our ethics program.

We would also like to thank the members of our Ethics Board. Finding individuals with the requisite integrity, professionalism, commitment and interest to serve on an Ethics Board is a challenging task, and we consider ourselves fortunate to have found such individuals.

Sincerely yours,

Paul M. Wendel, Jr.  
Chautauqua County Executive

Enclosure

---

Ethics Oversight Audit of Chautauqua County  
Audit Time Period January 1, 2017-September 30, 2018

Key Finding 1: Pertaining to Posting of New York State General Municipal Law (GML)

General Municipal Law §807 states:

The chief executive officer of each municipality shall cause a copy of sections eight hundred through eight hundred nine of this article to be kept posted in each public building under the jurisdiction of his or her municipality in a place conspicuous to its officers and employees.

Our interpretation of the law differs from that of the auditors of the Officer of the State Comptroller. Noting that the law does not require paper postings on bulletin boards, we believe that we effectively satisfied the requirements of the law, and disagree with the audit finding.

See  
Note 1  
Page 18

County policies and procedures, including ethics forms and requirements, are posted in one, central location, where they are conspicuous to County employees. For employees who work in the field and do not have a County-issued computer, such policies and procedures take the form of paper postings in the buildings in which such employees report for work. In buildings in which employees have computers, including the three buildings which were audited, such policies and procedures are posted on the County intranet site. Benefits of electronic over paper posting include: (i) they cannot be removed by unauthorized personnel; (ii) they are readily updated, as needed (our posting was updated after there was a change to the law in 2018); (iii) they can be electronically searched for terms of particular interest; (iv) they can be inconspicuously reviewed, which is advantageous to potential whistleblowers; (v) they can be saved, printed, and reviewed at leisure; and (vi) they automatically travel with those who use computers in the field.

At all times during and since the audit period, the required GML provisions were electronically posted in the audited buildings, and the following e-mails were issued to County employees during the audit period:

---

**From:** County Info <[CountyInfo@co.chautauqua.ny.us](mailto:CountyInfo@co.chautauqua.ny.us)>  
**Sent:** Friday, February 17, 2017 10:07 AM  
**To:** All County Email Recipients <[AllCountyEmailRecipients@co.chautauqua.ny.us](mailto:AllCountyEmailRecipients@co.chautauqua.ny.us)>; All CCSO Email Recipients <[ALL@sheriff.us](mailto:ALL@sheriff.us)>  
**Subject:** Reminder-- NY Municipal Law Article 18 Sections 800-809 Posting

County Employees:

Per Article 18, Section 807 of the New York General Municipal Law, the County is required to have a copy of Sections 800 through 809 of Article 18 posted in each public building in a place conspicuous to its officers and employees. This article deals with conflicts of interest of municipal officers and employees.

In an effort to meet the above requirement, this is a reminder about the article and that it can be found on the [County Executive's page](#) of the county intranet site and on the [Chautauqua County Ethics Board's page](#) of the county website under "Quick Links." No changes have been made to this article since the last update notification was sent out in June 2016, but the Chautauqua County Code of Ethics was recently updated to reference some of these sections of the General Municipal Law. Please take a moment to review Article 18, Sections 800-809 at one of the links provided above.

In departments where some or all employees do not have access to the internet, the department head is responsible for printing and posting the document on a bulletin board in his or her department.

For more information please contact the County Executive's Office at 753-4211.

Thank you,

Vince Horrigan  
Chautauqua County Executive

---

**From:** County Info <[CountyInfo@co.chautauqua.ny.us](mailto:CountyInfo@co.chautauqua.ny.us)>  
**Sent:** Tuesday, February 20, 2018 2:52 PM  
**To:** All CCSO Email Recipients <[ALL@sheriff.us](mailto:ALL@sheriff.us)>; All County Email Recipients <[AllCountyEmailRecipients@co.chautauqua.ny.us](mailto:AllCountyEmailRecipients@co.chautauqua.ny.us)>  
**Subject:** Reminder-- Article 18, Section 800-809 of NY General Municipal Law

County Employees:

Per Article 18, Section 807 of the New York General Municipal Law, the County is required to have a copy of Sections 800 through 809 of Article 18 posted in each public building in a place conspicuous to its officers and employees. This article deals with conflicts of interest of municipal officers and employees.

In an effort to meet the above requirement, this is a reminder about the article and that it can be found on the [County Executive's page](#) of the county intranet site and on the [Chautauqua County Ethics Board's page](#) of the county website under "Quick Links." No changes have been made to this article since the last update notification was sent out in February 2017. Please take a moment to review Article 18, Sections 800-809 at one of the links provided above.

In departments where some or all employees do not have access to the internet, the department head is responsible for printing and posting the document on a bulletin board in his or her department.

For more information please contact the County Executive's Office at 753-4211.

Thank you,

George M. Borrello  
Chautauqua County Executive

In addition, the County's ethics training included a link to the GML provisions. Also on the County's intranet site is the Office of the New York State Comptroller's April guidance document titled "Conflicts of Interest of Municipal Officers and Employees," explains the legal requirements.

---

We note that when checking for the postings the state’s auditor opined that the state posting requirement is an archaic requirement that the state legislature should change. As indicated in the audit report the paper bulletin board posting system failed in that such a posting, which had been in place and may have been in place during the audit timeframe, had been removed at some point prior to the date of the audit. When auditors suggested purchase of the Comptroller’s office’s poster containing the GML provisions, we found that the poster was out-of-date and did not accurately reflect current law.

See  
Note 1  
Page 18

If the Comptroller’s office interprets the law as mandating paper postings on bulletin boards, and that electronic postings are not sufficient under the law, we encourage the office to recommend to State Legislators that this General Municipal Law requirement be updated.

**Key Finding 2: Some Financial Disclosure Statements Were Not Received by April 30th**

The County is proud of its 100% compliance rate for the filing of disclosure statements. We acknowledge that during the audit term, some annual statements were not filed by the County’s self-selected deadline of April 30<sup>th</sup> of the year in which they were due; however the County’s selection of April 30 or any other particular date is a not a state requirement. The Ethics Board, which is charged with enforcing the Code, affords additional time to file, and engages in enforcement actions, as it deems appropriate, taking into consideration postmark dates, medical concerns, the timing of the filer’s County-related activities, and other extenuating circumstances.

See  
Note 2  
Page 18

Of significance is the fact that County officers and employees are required to file amendments to their statements within thirty days of a material change to the information on their statement, regardless of when their annual statements are due.

The County’s goal remains receipt of all forms by April 30<sup>th</sup> of each year, but much more important is achieving the 100% compliance rate whether or not it is attained right on April 30<sup>th</sup>.

**Key Finding 3: The Ethics Board did not Compare Disclosed Business Interests to a County Vendor List.**

As indicated in the report, the Ethics Board reviews disclosure statements for both content and completion. The County Ethics Board’s careful review of the statements frequently results in them being returned to employees for completion, correction or clarification. The Ethics Board makes inquiries of County Law Department and County Executive staff when they have questions about whether an entity on a financial disclosure statement might conduct business with the County, or about other matters.

County Finance staff, during the time period of the audit through the present, provide notification to the Ethics Board’s assistant in the County Executive’s office when a County employee is added as a vendor in the County’s computer system, for purposes of conflict checking. Additionally, the County Executive staff member who receives Statements of

---

Financial Disclosure as the Ethics Board assistant, also processes County contracts, and has identified a number of actual or potential conflicts of interest through that dual role.

We agree that “[a]lthough not required to do so, neither the assistant nor the Ethics Board compared disclosed business interests with vendor payments or compiled a list of filers’ outside business interests for the purchasing department to identify potential interests in contracts that may be prohibited by GML.” These suggestions for supplemental means by which to identify conflicts are appreciated.

Additional Items Cited in the Report
--------------------------------------

Page 5 of the audit report: The Ethics Board did not receive Ethics Training.

We disagree with the State’s conclusion. With respect to both the County’s Code of Ethics and New York State General Municipal Law, Board members receive frequent ongoing education and guidance from an Assistant County Attorney, who attends every meeting, in connection with the following Ethics Board activities:

- 1) Annual review, modification, and approval of the ethics training issued by the Ethics Board for County officers and employees;
- 2) Annual review of the Code of Ethics for purposes of recommending changes to the Code, which during the audit period included Board recommendations to expand the definition of the term “Related person,” and to add several new titles to the list of those required to file a Statement of Financial Disclosure;
- 3) Annual review and modification, as needed, of the format for the financial disclosure statement. The format of the statement was amended for filing year 2017 to specifically reference General Municipal Law section 803 and to mirror the requirements thereof;
- 4) Ongoing, detailed review of various provisions of the Code for purposes of responding to questions presented to the Ethics Board. Eleven questions were addressed during the audit period: two pertaining to the signing of a County contract on behalf of a third party; one pertaining to disclosure of real property, one pertaining to disclosure of income; one pertaining to disclosure of an investment account; one pertaining to completion of the statement of financial disclosure; one pertaining to dual-“employment” conflicts; one pertaining to multiple filings; two pertaining to gifts; and one pertaining post-employment conflicts; and
- 5) Ongoing, detailed review of various provisions of the Code for purposes of addressing complaints made to the Ethics Board. There was one formal complaint received during the audit term pertaining to post-County employment.

See Note 3 Page 18
--------------------------

In addition to guidance rendered in connection with the above, the Assistant County Attorney periodically provides information to the Board acquired from the Comptroller’s office, the Committee on Open Government and other sources pertaining to recent ethics violations, current law, and changes or potential changes to the law.

---

Comptroller guidance, such as that in the document titled “Conflicts of Interest of Municipal Officers and Employees,” is available to the Ethics Board (this particular document was posted on the County’s intranet during and since the audit). Information from the New York State Comptroller’s document titled “Conflicts of Interest: Municipal Officers and Employees – The Fundamentals of Article 18 of the General Municipal Law” was acquired by the Assistant County Attorney on March 8, 2017 and used to assist Board members, during the audit term, in responding to the questions mentioned in item 4 above.

If the Office of the State Comptroller believes that its existing guidance materials coupled with ongoing pro-active guidance and assistance from an attorney do not provide sufficient training for members of ethics boards, we welcome any supplemental training which the state wishes to provide.

See  
Note 4  
Page 18

Page 5 of the audit report, also included under the heading “The Ethics Board Did Not Receive Ethics Training,” but pertaining to the acknowledgment of receipt of the Code by new hires. *While not required by the Code of Ethics*, the report notes that 3 out of 40 newly hired employees did not acknowledge receipt of the Code of Ethics when hired. Since such an acknowledgment is not required by State or County law, we question its inclusion in the audit report. As noted in the report, two of the three individuals received the full ethics board training, which includes the link to the Code, shortly after hire. The third individual, though receiving a paycheck via the County, worked at Meals on Wheels, a separate not-for-profit corporation, as part of a federal program to help individuals gain skills to return to work. Given the fact that she did not work for or at the County, it is debatable whether she was subject to the Code of Ethics as a County officer or employee.

See  
Note 5  
Page 18

Page 6 of the audit report, also included under the heading “The Ethics Board Did Not Receive Ethics Training,” but pertaining to the posting of the County’s Code of Ethics. *Although not required by law*, it is recommended that the County’s Code of Ethics be visibly posted in all County buildings. Since the State Legislature has not deemed such a requirement worthy of inclusion in the law, we wonder at its inclusion in the audit report. Regardless, the Code was posted during and since the audit on the County’s intranet site, where County employees will find it along with other County policies and procedures.

See  
Note 1  
Page 18

#### APPENDIX A: COUNTY CODE OF ETHICS INFORMATION

As noted in the audit report, all provisions required to be in the County’s Code of Ethics are present.

# Appendix C: OSC Comments on the County's Response

---

## Note 1

GML requires sections 800 through 809 of GML be “kept posted” in each public building, as such we stand by our finding that these sections were not posted.

Our auditors did not suggest the County purchase our poster, as there has never been a cost for this. The County could obtain a poster with these sections from our website: ([www.osc.state.ny.us/files/local-government/publications/pdf/gmlposter.pdf](http://www.osc.state.ny.us/files/local-government/publications/pdf/gmlposter.pdf)).

We conducted our audit using criteria set forth in State and local law and certain best practices. While the posting of sections 800 through 809 of GML are required by State law, our recommendation to visibly post the code of ethics in all County buildings is a best practice to increase awareness of the County's code of ethics.

## Note 2

The County's code of ethics' deadline for filing an annual disclosure statement is April 30. However, the code of ethics does not address or include a provision allowing a required filer to request a filing extension. In addition, there is no provision in the code of ethics authorizing the Ethics Board to grant an extension beyond the April 30 deadline each year.

## Note 3

During our audit field work, County officials did not provide us with any information or documentation to show that Ethics Board members received formal or informal ethics training during our audit period.

## Note 4

Ethics Board members should have a clear understanding of the duties imparted upon them through State law and the code of ethics. To help facilitate such training, OSC has prepared a number of resources, including our document *Conflicts of Interest: Municipal Officers and Employees – The Fundamentals of Article 18 of the General Municipal Law* available at [www.osc.state.ny.us/files/local-government/resources/pdf/Article18GeneralMunicipalLaw.pdf](http://www.osc.state.ny.us/files/local-government/resources/pdf/Article18GeneralMunicipalLaw.pdf).

## Note 5

We acknowledge that the County determined this individual to be a contractor for the County and amended our report to reflect such information provided during and following our exit discussion.

## Appendix D: Audit Methodology and Standards

---

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed County officials, employees and Ethics Board members to gain an understanding of the governing and ethics oversight.
- We reviewed policies, procedures and the Legislature's journal of proceedings related to ethics.
- We reviewed all 554 disclosure statements for the audit period to determine whether they were completed and properly filed on time and any potential conflict of interests were reported to the Ethics Board.
- We reviewed all advisory opinions issued by the Ethics Board during the audit period.
- We reviewed procedures to receive ethical complaints from the public, which consist of receiving complaints through a link on the County website or through a confidential compliance hotline.
- We used our professional judgment to select a sample of 40 of 386 newly hired employees during our audit period, with no expectations of greater or lesser results, to determine whether they attest to having received and reviewed the code of ethics.
- We used our professional judgment to select a sample of three buildings from a list of County departments and 13 respective buildings provided by the operations assistant. We walked through these buildings to determine whether the conflict of interest statute was posted. For our sample, we selected the building where we conducted a majority of our fieldwork and two additional nearby County buildings, with no expectations of greater or lesser results.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or relevant population size and the sample selected for examination.

---

The Legislature has a responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the County Clerk's office.

## Appendix E: Resources and Services

---

### **Regional Office Directory**

[www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional\\_directory.pdf](http://www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263196&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All)

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

[www.osc.state.ny.us/local-government/fiscal-monitoring](http://www.osc.state.ny.us/local-government/fiscal-monitoring)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263206&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All)

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

[www.osc.state.ny.us/local-government/resources/planning-resources](http://www.osc.state.ny.us/local-government/resources/planning-resources)

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

[www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf](http://www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/local-government/required-reporting](http://www.osc.state.ny.us/local-government/required-reporting)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263211&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All)

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

[www.osc.state.ny.us/local-government/academy](http://www.osc.state.ny.us/local-government/academy)

## Contact

Office of the New York State Comptroller  
Division of Local Government and School Accountability  
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: [localgov@osc.ny.gov](mailto:localgov@osc.ny.gov)

[www.osc.state.ny.us/local-government](http://www.osc.state.ny.us/local-government)

Local Government and School Accountability Help Line: (866) 321-8503

---

**STATEWIDE AUDIT** – Julie Landcastle, Chief Examiner

Utica State Office Building, Room 604 • 207 Genesee Street • Utica, New York 13501

Tel (315) 793-2484



Like us on Facebook at [facebook.com/nyscomptroller](https://facebook.com/nyscomptroller)

Follow us on Twitter [@nyscomptroller](https://twitter.com/nyscomptroller)