



TOWNSHIP OF IRVINGTON
LEGAL DEPARTMENT
MUNICIPAL BUILDING - CIVIC SQUARE
IRVINGTON, NJ 07111

Ramon E. Rivera, Esq.
Township Attorney

Honorable Tony Vauss
Mayor

Tel: 973-399-6636
Fax: 973-399-6723

Evelyn Akushie-Onyeani, Esq.
1st Assistant Township Attorney

Dwayne D. Warren, Esq.
2nd Assistant Township Attorney

February 23, 2024

Kevin D. Walsh, Acting State Comptroller
State of New Jersey
Office of the State Comptroller
Audit Division
P.O. Box 024
Trenton, NJ 08625-0024

Re: Response to Follow-up Report – Township of Irvington: A Performance Audit of Financial Management Practices

Dear Mr. Walsh:

The Township of Irvington received draft correspondence, dated January 26, 2024, from your office with preliminary results of a follow-up review conducted in conjunction with the Township. I write to you in response, as the Township Attorney, to provide you with information in connection with the draft previously mentioned. As you may know, this office also received an extension of the deadline that was previously set at February 9, 2024 to February 23, 2024. We appreciate the additional time provided.

The Township and the Office of the State Comptroller have been working since 2009 to improve the financial management practices in the Township. Recently, your office has met with the Township, reviewed information, and made preliminary findings in the following areas:

1. Preparation, maintenance and reconciliation of accounting records;
2. Design and implementation of internal controls;
3. Personnel practices;
4. Compliance with laws pertaining to financial administration;
5. Municipal Finance Officer Certificate;
6. Conflict of interest.

While at this point we will not comment on the recommendations, which were made in the January 26th correspondence, we will provide feedback on the above mentioned categories which may ultimately impact the recommendations previously made in the draft.

Section 1: Preparation, maintenance and reconciliation of accounting records

No comment on this section at this time.

Section 2: Design and implementation of internal controls

The CFO is finalizing the Townships accounting policy and procedures, manual which will documenting the internal controls, roles duties and responsibilities of all areas. The CFO submitted the completed parts of the manual which includes, purchasing manual, tax collections policy and procedures, along with the monthly and year end checklist, to your office as part of your review that have been completed and implemented, along with training for staff. Each the above is a part of the accounting manual (see attached draft outline). Upon completion and approval on going training will be provided to all finance staff and monitor for compliance and timely reporting.

Section 3: Personnel practices

In 2014, the Township Administration inherited several deficiencies as detailed in the 2009 and 2011 Comptroller Reports regarding practices by the former administration in a number of key areas. During the tenure of this Administration, the Business Administrator has turned over almost the entire staff in multiple divisions of the Finance Department and implemented a number of procedural changes to correct systemic deficiencies noted in the Comptroller's report. The present Township staff have worked tirelessly to improve operations and have raised the standard of performance in the daily tasks demanded of them. The Business Administrator has used the evaluation tool to highlight very specific deficiencies while balancing the need to maintain morale and encourage progressive action on the part of the staff to correct any systemic concerns noticed to us by the State report. The conclusion by the State implies that the ratings received by the staff are to be second guessed or may cause confusion whereas the Administration believes the ratings are appropriate to the volume of work demanded of the staff to maintain the current level of operations while simultaneously working to prioritize needed corrective action.

Section 4: Compliance with laws pertaining to financial administration

No comment on this section at this time.

Section 5: Municipal Finance Officer Certificate

In your correspondence, you advise that based upon the 2023 review, the CFO's Municipal Finance Officer Certificate expired as of December 31, 2022. You further advise that although it was reinstated in September of 2023, it was reported by the DLGS that the CFO's certificate would not be reinstated for a fourth time.

I enclose the following documents, which indicate that the CFO's license has been reinstated. The documents include correspondence dated January 25, 2024 from the Department of Community Affairs to Faheem J. Ra'Oof, who is our CFO. The correspondence indicates that he has completed the examination for a Certified Municipal Finance Officer and as such his CMFO cert will be issued upon receipt of a check made payable to the State. Also enclosed is a copy of a check issued to the State on February 6, 2024. In addition, there are other documents which are certifications on behalf of the CFO demonstrating his diligence toward ensuring that his certification is up to date and records of all efforts to support same. Additionally, Mr. Ra'Oof has obtained all required CPE's. The lapse was only due to an oversight as the renewal period was extended, which led to confusion by Mr. Ra'Oof as to the deadline for his State CPA license. Also attached is State DCA Certification dated December 6, 2023 recognizing Mr. Ra'Oof as a Certified Municipal Finance Officer.

Based upon the documents, it is our position that the CFO does have a valid certificate and we request that this section be modified to reflect that he does have the requirements necessary to serve in the position.

Section 6: Conflict of Interest

In your draft correspondence, your office indicates that the relationship that exists with the CFO and the subject property (that the Township leases) creates a clear conflict of interest. At the outset we dispute the conclusion that there is a clear conflict of interest either under the Local Government Ethics Law as cited in your letter or under the Township Municipal Code.

I begin with a review of the Local Government Ethics Law, which as you stated, is cited under N.J.S.A. 40A:9-22 with particular attention to Section 22.5. In that section it indicates that a local authority shall not award a contract that is not publicly bid. In other words, it permits a local entity to award a contract that is publicly bid to a local government officer or employee with the proviso that other ethical requirements in the law are met. The basic tenet of the ethics law is to prevent conflicts where an individual has direct control or works in a space where they may control the award of a contract or some benefit and gain personally. In this instance, the CFO does not make the decision or selection as to which spaces the Town may rent, lease or buy for its own needs for public space. Those recommendations either come through the Business Administrator's Office or our Economic Development Office. The CFO has no role in selecting, deciding, or pointing the Township in any direction with respect to real estate decisions. Furthermore, it should be noted that the rents actually charged for this space are either below or within the market rates for office spaces in Irvington.

In 2017, the Township needed office space. As such, the Township issued a Request for Proposals for said services. For the past two years, the Township issued a Request for Proposal on April 13, 2023 and the prior year April 22, 2022. Please note, the Township advertised the legal notice for service in the State Newspapers, NJ Star Ledger and ran the ad for more than ten business days to obtain competitive pricing. Upon receipt of proposals on May 18, 2022 only one bid was received, similarly in the prior year only one bid was received on May 03, 2022.

Current available office space in Irvington is approximately \$28 - \$29 per square foot, which is almost double the price that the Township has secured with the BSR group. The space being rented is

approximately 2,425 square feet, at \$19.79 per square feet currently and the average office space rental for Irvington is \$20.33 per square feet. See attached online search.

The lease with BSR does not present a conflict as identified under local government ethics law because the CFO is not directly involved in the selection of property that the Township leases and does not take any position with respect to any additional properties the Township may seek. In addition, the Township followed all proper procurement requirements in issuing a bid and reviewing response in connection with the leasing of this property.

With respect to the Township Municipal Code as referenced in Section 7-4 in the draft provided by your office, we dispute the following with the conclusion that that also creates a potential conflict issue for the Town. In reviewing that Section, in the outset it should be noted that that refers potentially to either an elected or appointed individual, whether an officer or an employee of a Town government. While the CFO is not either elected or appointed, even if we were to assume that as an employee he is subjected to this section, our position is that given his role is only serving as the CFO and not in making a decision as to whether or not the Town engages in this contract, removes the potential for a direct conflict based upon his ownership of the property. Furthermore, the final section of this ordinance refers to individuals operating certain utilities or railways, which has nothing to do with leasing office space. The Township is reviewing this section of the ordinance to determine its applicability going forward as we do not want to prohibit individuals who may be working in the Town from taking advantage of programs that the Township offers for first time homebuyers, or other benefits for low-wage and other individuals in the Township who may want to take advantage of purchasing properties through a tax auction or other opportunities that are available to other residents of the Township.

Based on the foregoing, we respectfully disagree with the conclusions made in the draft correspondence and dispute the contention that the financial relationship with the CFO and the Township is not consistent with the requirements of the Ethics Law or the Township Municipal Code. It should be noted that if the Town were to discontinue the contract immediately, we would incur significant increased costs and disruption related to moving office space to a more expensive location which may or may not be available or satisfactory to the Township's needs.

Sincerely,



Ramon E. Rivera
Township Attorney

C: Mayor Tony Vauss
Jamilah Z. Beasley, Council President
Musa Malik, Business Administrator
Faheem J. Ra'Oof, Chief Financial Officer
Christopher Jensen, CPA, Director, Audit Division